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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,076	08/22/2003	Yuichi Mori	51015/DBP/A400	9698

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/647,076		MORI ET AL.	
	Examiner		Art Unit	
	Jeffrey L. Gellner		3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The perforated plate of claim 7, line 2, is not referenced in the specification.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “perforated plate” of claim 7, line 2, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR

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1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, and 12-14 are rejected under 35 U.S.C. §102(b) as being anticipated by Weder et al. (US 5,363,592).

As to Claims 1, 12-14, Weder et al. discloses a plant-cultivating container (28 and 28a of Fig. 3) having a receiving portion (36 of Fig. 3) for receiving a plant body; the container having at least a portion of it being a vapor-permeable portion comprising a non-porous hydrophilic film ("cellophane" of col. 2 line 52) which prevents direct contact between the receiving portion and external water, the selective moisture vapor-permeable portion not allowing water to pass therethrough, but allowing water vapor to pass therethrough.

As to Claim 2, Weder et al. further disclose the moisture vapor-permeable portion permeability of 1×10^3 g/m² per 24 hr (from Applicant's specification where cellophane is listed in page 13 line 16 as an acceptable moisture vapor-permeable material).

As to Claims 3 and 4, Weder et al. further disclose the ratio of vapor-permeable portion to total surface area is 20% or more or the total surface area (Figs. 1 and 3).

As to Claim 7, Weder et al. further disclose a perforated plate (Fig. 3 in that 38 is a perforation).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,363,592).

As to Claims 5 and 6, the limitations of Claim 1 are disclosed as described above. Weder et al. further discloses the selective moisture vapor-permeable portion a composite material (col. 2 lines 56-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Weder et al. by adding water permeable material, for example burlap, to the container to add support or thickness and to place on the outside to meet consumer demand.

Claims 8-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sakai (JP 7-45169) in view of Weder et al. (US 5,363,592).

As to Claim 8, Sakai discloses a plant container (1 of Fig. 1) having a receiving portion for a plant body (9 of Fig. 1); the container having a portion that is a selective vapor-permeable portion (2 of Fig. 1); a plant body in the container (Fig. 1); and cultivating the plant with the

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selective moisture vapor-permeable portion in contact with water and preventing direct contact between the plant body and external water (see Fig. 1). Not disclosed is the selective moisture vapor-permeable portion a film. Weder et al., however, discloses the selective moisture vapor-permeable portion being a film ("cellophane" of col. 2 lines 48-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Sakai by using the film of Weder et al. so as to find more use for the film so as to increase sale. The container of Sakai as modified by Weder et al. inherently perform the method steps recited in Claim 8.

As to Claim 9, Sakai as modified by Weder et al. further disclose the water being temperature controlled water (in that all water has an temperature that is controlled by the ambient environment).

As to Claims 10 and 11, Sakai as modified by Weder et al. further disclose salt water (10 of Fig. 1).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Silver disclose in the prior art a pot with water-impermeable insert. Mori et al. discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', with a stylized, cursive script.

Jeffrey L. Gellner